Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Federal-State Joint Board on	)	CC Docket No. 96-45
Universal Service	)	

REPLY COMMENTS OF SBC COMMUNICATIONS INC. IN RESPONSE TO PUBLIC NOTICE OF NOVEMBER 18, 1996

James D. Ellis
Robert M. Lynch
David F. Brown

Attorneys for
SBC COMMUNICATIONS, INC.

175 E. Houston, Room 1254
San Antonio, Texas 78205
(210) 351-3478

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SUMMARY*

As supported by many and diverse commenters, the only truly competitively neutral means to support universal service is by way of a mandatory surcharge, explicitly passed-through on customer bills by all carriers.

Support should only be available to carriers that meet the Section 214(e) requirements and are subject to symmetrical quality of service and other regulatory obligations. Inasmuch as wholesale prices already reflect universal service funding, no support should be paid to any carrier for resold service. Universal service funding is needed to support networks; those carriers purchasing the use another carrier's network at prices less than the actual cost of providing that network should not be eligible for universal service support. "Sufficient" support can only be ensured by adopting actual costs to calculate support.

To avoid decreased State funding for Lifeline support, federal baseline support should increase to $5.25 only in those States that do not decrease their contributions. The Commission should modify the Joint Board's recommendation on disconnecting Lifeline customers to avoid unintended consequences.

Contrary to the Joint Board, the Commission should clearly determine that CCL charges are universal service support flows, and should not ignore the potential for raising the single-line SLC cap in CC Docket No. 96-262. MCI's suggestion to reduce CCL charges to its version of economic cost contravenes numerous and extensive Commission proceedings and orders, and other legal precedents. It must be rejected.

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* The abbreviations used in this Summary are as defined in the main text.

WorldCom's allegations with respect to Texas and Kansas statutes are unfounded, premature, and ultimately irrelevant. The Texas statute may never result in any universal service funding under Section 3.608(b)(3), and the Kansas statute is the basis for bringing intrastate access rates into parity with interstate rates. In any event, neither this proceeding nor this round of comments is the appropriate forum for addressing intrastate universal service funding or attempting to preempt State law. The Commission must reject WorldCom's requests for preemptive injunctive action against the States.

The recommended $2.25B annual fund for schools and libraries is excessive, unreasonable, and without sufficient use limitations. No reasonable interpretation of Section 254(c)(3) or 254(h) exists that supports the inclusion of Internet services or internal connections; that authorizes the Commission to set discounts for intrastate services; or that supports use of the LCP concept or the other price- or discount-setting mechanisms suggested by commenters. It would be unlawful and inappropriate to affect existing contracts with schools and libraries, or to attempt to expand those eligible for discounts. Given the risks involved, the use of consortia should be restricted and they, not carriers, should be responsible for their own compliance recordkeeping.

No need for transmission speeds greater than 1.544 Mbps has been shown for health care providers, and no credible justification for infrastructure build-out has been offered. The Act does not call for the elimination of distance or usage-based rates for health care services, but simply requires that reasonable measures exist to ensure the reasonable comparability of the rates charged to rural and urban health care providers.

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SBC Communications Inc. ("SBC"), on behalf of itself and its subsidiaries, submits these Reply Comments to the comments filed in response to the Public Notice, DA 96-1891, released November 18, 1996. The Public Notice and the comments were addressed to the Joint Board's Recommended Decision[1] and the Commission's legal authority to implement such recommendations under the Telecommunications Act of 1996[2] ("Act") or otherwise.

I. OVERVIEW

As SBC noted in its comments,[3] the Joint Board's Recommended Decision left many

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[1] *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Recommended Decision, FCC 96J-3 (November 8, 1996) and Erratum, FCC 96J-3 (November 19, 1996).

[2] Pub. L. No. 104-104; 110 Stat. 56 (1996).

[3] "Comments of SBC Communications Inc. In Response to Public Notice of November 18, 1996," filed December 19, 1996 ("SBC"). The comments of any party are referenced herein by citing only that party's name.

issues either unaddressed or unresolved. In many instances where the Joint Board provided recommendations, the direction taken by the Joint Board was inappropriate or unlawful. Rather than revisit every aspect of the Recommended Decision, SBC will limit these Reply Comments to certain significant matters necessitating further response as a result of the comments filed by other parties. By not addressing any particular position or proposal submitted by way of third party comments or elsewhere within this proceeding, SBC does not indicate agreement with any position, relinquish its position on those particular issues, or otherwise waive its rights.

II. THE ACT LOGICALLY REQUIRES THAT CONSUMERS ULTIMATELY PROVIDE THE SUPPORT FOR UNIVERSAL SERVICE BY WAY OF A MANDATORY, COMPETITIVELY NEUTRAL EXPLICIT SURCHARGE BILLED BY ALL CARRIERS

A. An Explicit Surcharge is Widely Supported by the Industry

As SBC demonstrated in its comments, the only truly competitively neutral means to support universal service costs is by way of a mandatory surcharge, explicitly passed-through on customer bills by all carriers.[4] In fact, an overwhelming number of parties, from diverse segments of the industry, recognized the need for universal service contributions to be explicitly identified on a customer's bill.[5] These proponents point out that a surcharge is the optimal means of

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[4] SBC, pp. 11-14.

[5] See, e.g., AirTouch Communications, Inc. ("AirTouch"), p. 26; ALLTEL Telephone Services Corporation ("ALLTEL"), p. 7; AT&T Corp. ("AT&T"), pp. 8, 9; Bell Atlantic Telephone Companies ("Bell Atlantic"), p. 10; BellSouth Corporation/BellSouth Telecommunications, Inc. ("BellSouth"), p. 15; California Department of Consumer Affairs, p. 38; Public Utilities Commission of the State of California, p. 13; Cincinnati Bell Telephone Company ("Cincinnati Bell"), p. 11; LCI International, Inc., p. 5; MFS Communications

satisfying Section 254's requirement of explicit recovery of universal service support. As AT&T noted, ultimately consumers will always pay for universal service contributions.[6] Anything other than a line item on a customer's bill will result in implicit support recovery,[7] which Congress clearly disfavors. Of course, the pass-through should follow the funding base (e.g., if the funding base is "gross revenues less payments to other carriers,"[8] then the pass-through should be applied to those revenues and the customers generating those revenues). Without such a pass-through, this proceeding will fall short of providing an explicit means for universal service support recovery that is consistent with the Act.

B. The Use of Gross Revenues Less Payments is Contrary to the Act

The Joint Board's failure to recommend a surcharge and its recommendation to use gross revenues less payments to other carriers is also contrary to the "equitable and nondiscriminatory contributions" requirement.[9] In addition to the reasons provided in SBC's Comments supporting

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Company, Inc. ("MFS"), pp. 13; NYNEX Telephone Companies ("NYNEX"), p. 23; Paging Network, Inc., p. 16; TDS Telecommunications Corporation/Century Telephone Enterprises, Inc., pp. 6-8, 11; United States Telephone Association ("USTA"), p. 22; U S WEST, Inc. ("U S WEST"), pp. 45-47; WorldCom, Inc. ("WorldCom"), p. 40.

[6] AT&T, pp. 8, 9.

[7] WorldCom, p. 40.

[8] Although this base was recommended by the Joint Board, the Commission should adopt retail revenues as the funding base for the reasons provided in SBC's comments. SBC, pp. 14-18.

[9] 47 U.S.C. 254(b)(7).

retail revenues as the funding base,[10] the following example demonstrates that the approach recommended by the Joint Board (i.e., gross revenues less payments to other carriers) violates the Act because it clearly disadvantages facilities-based carriers.

Assume that each carrier (i.e., the facilities-based carrier and the reseller) each acquire one customer with identical telecommunication needs. Assume further that the proposed funding base results in an effective surcharge rate of 2%; the facilities-based carrier and the reseller both receive $50 for services provided from their respective end-user customer and the effective wholesale discount is 20%. Using these assumptions, the following contribution requirements would result:

		Facilities-Based Carrier	Reseller
A.	End-User Revenue:	$50.00	$50.00
B.	Wholesale Revenue:	$40.00	$ 0.00
C.	Payments to Other Carriers:	$ 0.00	$40.00
D.	Revenues for Funding Base: (A + B - C)	$90.00	$10.00
E.	Universal Service Contribution: (D * 2%)	$ 1.80	$ 0.20

If the facilities-based carrier is unable to pass the relevant portion of its contribution on to the reseller, then the facilities-based carrier is burdened with the recovery of $1.80. In contrast, the reseller must only recover $0.20.

[10] SBC, pp. 14-18.

At a minimum, in such a scenario, the facilities-based carrier must be allowed to pass the relevant portion of its contribution on to the reseller/rebundler. Even under this scenario the facilities-based carrier must still collect $1.00 from its retail customer while the reseller must only collect $0.20 from its retail customer.[11] The magnitude of this disparity would obviously be greater for large revenue-producing customers. Under the Joint Board's recommendation, facilities-based carriers would always be unreasonably disadvantaged in the marketplace. Neither the Act nor Section 254 countenances any such discriminatory effect against facilities-based carriers or their customers.

The only way to implement a competitively neutral mechanism is to determine a surcharge percentage using retail revenues as the finding basis and to require all telecommunications carriers to assess that surcharge percentage on all retail transactions.

C. Continued Reliance on Implicit Support from Other Services is not Sustainable and Violates the Act

Although some parties have suggested that the Commission should continue to require incumbent LECS to implicitly support universal service with revenues generated by non-universal service related services,[12] the Act expressly prohibits the continued use of implicit mechanisms for

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[11] The facilities-based carrier has $50 in end-user revenues resulting in a contribution of $1.00 from the end-user [($50)(2%)]. The facilities-based carrier also has $40 in wholesale revenues resulting in a contribution of the remaining $0.80 from the wholesale customer.

[12] See, e.g., Ad Hoc Telecommunications Users Committee ("Ad Hoc Telecom"), p. 11; Teleport Communications Group, Inc. ("TCG"), p. 6; Time Warner Communications Holdings, Inc. ("Time Warner"), p. 19; WorldCom, p. 21. Ad Hoc Telecom (p. 14) and Time Warner (p. 23) go so far as to suggest establishing two revenue-based benchmarks, one for the incumbent

universal service support recovery. Moreover, as competition continues to flourish, the continued reliance on implicit mechanisms arbitrarily assigned to a subgroup of service providers (i.e., incumbent LECS) will necessarily fail as competitors, competitively advantaged by such schemes, acquire those customers.[13]

III. UNIVERSAL SERVICE SUPPORT MUST CONTINUE TO BE DESIGNED TO BENEFIT CONSUMERS, NOT TELECOMMUNICATIONS CARRIERS

When Congress passed Section 254 as part of the Act, it explicitly reaffirmed the Nation's longstanding commitment to ensuring that customers throughout the Nation have affordable access to a ubiquitous public telecommunications network. In doing so Congress instructed the Commission to reform, as necessary, the methods by which universal service is achieved to meet the goals set by Congress. Numerous parties have attempted to twist the implementation of the new universal service structure into an opportunity to achieve competitive goals wholly unrelated to universal service goals. Their primary strategy is to leave incumbent LECS with the burden of providing the physical network used to provide universal service (especially where not economically attractive for the competitor to invest in network facilities), while denying incumbent LECS both sufficient support for maintaining that network and the ability to recover

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LECS including yellow page revenues, and another for all other carriers excluding yellow page revenues. Obviously such a discriminatory method cannot be construed, in any fashion, as satisfying the principle of competitive neutrality or the elimination of implicit support (especially when the support would be coming from non-telecommunications services).

[13] Telecommunications Resellers Association acknowledges at page 2 that their membership, within the past decade, has grown to serve millions of residential and commercial customers and generates annual revenues in the billions of dollars.

their contributions paid into the federal fund. Some of these same parties are more than willing to accept funding, and in fact feel entitled to funding, for only serving select customers without accepting any of the real responsibilities associated with assuring that universal service goals are met.

For example, Section 214(e)[14] is clear that in order for a carrier to be eligible to receive universal service support it must offer universal service to all customers within the designated service area. WinStar Communications, Inc. ("WinStar") wants the Commission to ignore this unambiguous statutory requirement and allow carriers that provide service only to selected customers to be eligible to receive support for serving high cost or low income customers.[15] When WinStar argues that it is technically infeasible for it to provide service to all customers within a designated service area, WinStar simply acknowledges the substantial effort, costs, and risks associated with being a facilities-based carrier. Universal service support should not be made available to carriers that are unwilling to accept the responsibilities of providing ubiquitous service which incumbent LECS shoulder every day. This is particularly true where the real issue is a desire to target only select, highly profitable customers rather than to offer service to all customers.

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[14] While Section 214(e) delineates the eligibility requirements a carrier must meet to be eligible to receive universal service support, the States should be permitted to establish the necessary criteria (e.g., quality standards) to determine when an eligible carrier receives support. See SBC, pp. 19-21.

[15] WinStar, p. 13.

Furthermore, although Section 214(e)(1)(A) absolutely requires an "eligible carrier" to be at least partially facilities-based, several parties filing comments would like the Commission to ignore that limitation and allow carriers serving customers solely through resale of another carrier's services to receive support. The Commission cannot waive this statutory requirement and must reject any suggestion that any carrier can be eligible for or receive universal service support for resold service. Nor can the Commission adopt any proposal that facilities-based carriers be required to pass along universal service support to resellers or to provide credits against funding obligations;[16] the Commission cannot evade the Act's requirements by attempting to do indirectly what it is prohibited from doing directly.

In an attempt to argue around that clear prohibition, various claims are made about resellers and the risks they assume. None of those claims is even partially valid. For example, Telecommunications Resellers Association ("TRA") attempts to convince the Commission that a non-facilities based carrier offering service through resale of an incumbent LEC's services has assumed a portion of the investment risk taken by the incumbent LEC in constructing facilities.[17] Nothing can be further from the truth. Resellers have not assumed any network investment risks -- they have instead made a conscious business decision to avoid them and leave all those risks directly with the facilities-based carrier. When an end-user purchasing service from a reseller

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[16] See Excel Telecommunications, Inc., pp. 13-15; Telco Communications Group, Inc., p. 10.

[17] TRA, pp. 10-16. See also MFS, p. 16.

cancels that service, the reseller simply cancels the service from the facilities-based carrier. Not only is the reseller spared the initial investment obligation, it also avoids any ongoing costs associated with the maintenance or replacement of the underlying facilities.[18] The facilities-based carrier, however, continues to be burdened with recovering the investment associated with those facilities.[19]

A simple numerical example demonstrates the appropriateness of SBC's positions. Assume that an incumbent LEC's cost of providing universal service to a customer is $80 per month, and that the benchmark is $30 per month. Under the Recommended Decision, federal universal service support of $50 per month would be available to help offset the unrecovered costs of providing universal service to that customer. Further assume that the incumbent LEC is only permitted to charge the customer $20 per month (a combination of intrastate and interstate charges), and that the effective wholesale discount is 20%. Under TRA's proposed structure, if a

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[18] Such reasoning is akin to concluding that a tenant leasing an apartment shares in the investment risk and responsibilities of the building owner. Of course, the tenant does not share the risk of purchasing the building, maintaining or replacing its roof, plumbing, air conditioner, or boiler. If, for example, the water heater breaks, the tenant does not repair it or buy a new one but calls the owner instead. The owner clearly and exclusively bears these risks with no guarantee of cost recoupment. Permitting resellers to receive universal service support for resold service would be analogous to allowing a tenant to receive tax incentives for the landlord's capital improvements.

[19] According to USTA's Phone Facts (1996), incumbent LECS have invested over $308 billion to provide ubiquitous networks over which universal service is being provided. Those investments were made, often in advance of actual customer demand and regardless of the economics, to ensure telecommunications service would be available upon request to customers. Of course, those investments were made with the expectation of a reasonable opportunity to recover those investments and a reasonable level of return thereon.

carrier is reselling universal service to that same customer, the incumbent LEC would receive $16.00 for providing the same network and universal service as before (and also performing wholesale activities), but the reseller would now receive the $50 per month in support. Thus, instead of having only $10 in unrecovered costs [$80-($20+$50)], the incumbent LEC would have a $64.00 [$80 - $16] shortfall. This example demonstrates what ALLTEL succinctly stated --- a universal service support discount is already reflected in the wholesale price that resellers pay.[20] In sum, given that universal service support is based on the costs of the network used to provide universal service, allowing a carrier to receive support for resold service would be inconsistent, unreasonable, and indeed irrational.

A similar analysis is also applicable for "rebundlers" to the extent they are able to purchase network elements at prices less than the facilities-based carrier's actual cost of providing those same facilities. Only in limited circumstances should rebundlers or carriers using unbundled network elements be eligible for universal service support.[21]

SBC has offered a reasonable solution that support should be available only in those instances where the costs to the carrier providing universal service exceed the regulatorily constrained prices for those same services to the carrier providing the underlying facilities necessary for the delivery of that service.[22]

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[20] ALLTEL, p. 5.

[21] SBC, pp.22-23.

[22] SBC, pp. 22-23.

IV. ACTUAL COSTS MUST BE USED TO DETERMINE SUPPORT THAT IS SUFFICIENT

Universal service support is the difference between the cost of providing the service and the revenues received. One of the most critical decisions the Commission must make, therefore, is to determine the appropriate cost standard.

The actual costs incurred in providing universal service are the only costs that will ensure sufficient support is provided to maintain the existing network over which universal service is being provided. TCG nevertheless suggests that avoidable costs -- the costs that would be avoided if the carrier stopped offering basic service yet continued to offer all its other services to all of its other customers -- should be the cost standard for determining support requirements.[23] A "minor" difficulty with TCG's artificial construct, however, is that if carriers stopped providing those services comprising universal service, there would be little if any demand for the other services.[24]

In any event, it is unreasonable to suggest that the use of a proxy cost model is most appropriate as long as a viable, tested method exists to produce a cost analysis premised on actual costs. Proxy models by their very design produce only an estimate of costs that would

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[23] TCG, pp. 5, 6.

[24] For example, suppose a car manufacturer produced cars with one option, a sunroof. If the manufacturer quit offering cars, there would be little demand for their sunroofs. The avoided costs for the manufacturer if they stopped offering cars but only continue to offer sunroofs would be zero because it could not offer sunroofs without producing the car in which the sunroof would be cut. Using TCG's cost standard, the manufacturer's cost of the basic car would be zero, while the cost of a sunroof would be $25,000.

conceptually be incurred on a forward-looking basis in an ideal environment. The proxy models proposed to date ignore the significant investment associated with the actual facilities currently being used in the local phone network. Moreover, the currently proposed proxy models do not take into account the nature of the technologies underlying those facilities. As SBC has repeatedly proposed, the Commission has affected, over time and following intense regulatory and public scrutiny, rules and processes by which the costs (i.e., investment and ongoing expense) can be reasonably assessed.[25] SBC is alarmed by the Commission's failure to seek comment on the use of actual costs in its Public Notice dated December 12, 1996, requesting comment on two of the cost models introduced in this proceeding.

Before the Commission can simply dismiss its existing cost processes, it must demonstrate that these processes are no longer reasonable for the assessment of costs. Alternatively, the Commission must demonstrate that the proxy model it seeks to adopt better assesses the costs associated with the provision of universal service. As indicated herein, this alternative is highly suspect since the proposed proxy models by their very design do not address the nature of the actual facilities or network being used. It is inconceivable that an incumbent LEC or new market entrant could construct, reconstruct or re-engineer their networks to assimilate the network design (i.e., forward-looking technologies) as recommended by the Joint Board.

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[25] See, e.g., "Comments of Southwestern Bell Telephone Company in Response to Public Notice of December 12, 1996" filed in this proceeding on January 7, 1997; "Supplemental Comments of Southwestern Bell Telephone Company on Cost Proxy Models" filed in this proceeding on August 9, 1996; and various ex partes filed by SBC in this proceeding including those dated August 16, 1996, September 6, 1996, September 16, 1996, and October 14, 1996.

As SBC has previously advised this Commission and the Joint Board members,[26] the Act mandates that the universal service support mechanism must be "specific, predictable and sufficient."[27] Because proxy models do not assess actual costs of the actual network facilities and technologies being used to provide universal service, those statutory requirements will not be satisfied. If the Commission fails to preserve its existing practice of using actual costs, it will be in direct contravention of its statutory requirements under the Act.

Contrary to the Joint Board's assumption supporting the use of forward-looking costs,[28] the environment is not one comprised of new market entrants, newly developed networks, and newly deployed technologies. Rather, the environment is marked by varied networks and technologies which have been deployed over time, under the intense scrutiny of federal and State regulatory commissions, in order to meet statutory and regulatory requirements for universally available telecommunications services and to meet evolving consumer demands. The incumbent LECs have worked diligently with regulators in the various jurisdictions, resulting in those social contracts necessary to best meet the needs of consumers. Those social contracts cannot simply be abandoned in order to advantage a particular class of providers. The Commission must use a cost model which does not unreasonably or arbitrarily advantage or disadvantage any particular class of provider. Clearly, the use of actual costs will best meet those requirements, as well as the

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[26] SBC ex parte filed October 14, 1996.

[27] 47 U.S.C. 254(b)(5).

[28] Recommended Decision, para. 277.

statutory requirements established by the Act.

V. THE COMMISSION SHOULD CAREFULLY CONSIDER CERTAIN RECOMMENDATIONS REGARDING LOW INCOME ASSISTANCE

The Commission should consider the prudent suggestion put forth by at least two parties that the federal Lifeline baseline should increase to $5.25 only in those States that choose not to decrease the State contribution.[29] Otherwise, increasing the federal baseline across the board might induce States to cut back on their contribution, reasoning that the increased federal support would be sufficient without as much State support.

Several parties also shared SBC's concern with the Joint Board's recommendation to prohibit LECs from disconnecting Lifeline customers for non-payment of toll charges.[30] A reasonable modification, as SBC suggests, is either to allow LECs to require free toll blocking for Lifeline participants with a history of outstanding toll charges, or similarly, to eliminate a LEC's ability to disconnect Lifeline participants who voluntarily elect toll blocking.[31]

VI. THE COMMISSION MUST RECOGNIZE THAT COMMON LINE CHARGES ARE INDEED UNIVERSAL SERVICE SUPPORT MECHANISMS

A wide representation of parties support extending the Joint Board's conclusion that carrier common line ("CCL") charges should be more efficiently recovered by similarly concluding that CCL clearly represents a universal service support flow, more appropriately

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[29] Competition Policy Institute, pp. 4, 5; NYNEX, p. 9.

[30] Bell Atlantic, p. 18; GTE Service Corporation ("GTE"), pp. 85-87; MCI Telecommunications Corporation ("MCI"), p. 13; MFS, p. 28.

[31] SBC, pp. 8, 9.

recovered from end-users contrary to the Joint Board's recommendation. Many entities call for rate rebalancing through an increase in the primary single-line subscriber line charge ("SLC").[32] Other parties encourage the Commission to analyze common line cost recovery and the SLC in its Access Reform proceeding.[33] The Joint Board's recommendation not to increase the primary single-line SLC was clearly premature in light of the overall unresolved issue of common line reform. SBC maintains that by accepting the Joint Board's recommendation not to increase the primary single-line SLC cap, the Commission would ignore a potentially effective means of resolving common line cost recovery in CC Docket No. 96-262.

SBC takes exception to MCI's claim that interstate common line charges should be reduced to its version of economic cost.[34] MCI completely ignores that interstate common line charges -- both the interstate CCL and the SLC -- constitute a rate structure that was the product of extensive Commission dockets, orders, and scrutiny. As established by the Commission, the CCL and the SLC are based on actual and legitimate LEC common line expenditures allocated for recovery in the interstate jurisdiction. Slashing CCL and the SLC to the levels suggested by MCI (without alternate recovery) would ignore all of those previous Commission actions, and would run the near certain risk of endangering the Commission's universal service objectives as well as

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[32] SBC, pp. 13-14; Ad Hoc Telecom, pp. 22-27; Frontier Corporation ("Frontier"), p. 8; GTE, p. 73; Sprint Corporation ("Sprint"), pp. 15-17.

[33] See *Access Charge Reform*, CC Docket No. 96-262, Notice of Proposed Rulemaking, Third Report and Order, and Notice of Inquiry, FCC 96-488 (released December 24, 1996).

[34] MCI, p. 16.

violate appellate court holdings and incumbent LECs' rights as articulated in NARUC v. FCC, 737 F.2d 1095 (D.C.Cir. 1984), cert. denied, 469 U.S. 1227 (1985); Dusquesne Light Co. v. Barasch, 488 U.S. 299 (1989); and FPC v. Hope Natural Gas Co, 320 U.S. 591 (1944).

VII. WORLDCOM'S ALLEGATIONS ARE UNFOUNDED, PREMATURE, AND IRRELEVANT

In its comments, WorldCom attacked recent Texas legislation with allegations about violating the principle of competitive neutrality, and requests that the Commission prohibit, inter alia, Texas from "taking any action" on the cited Texas statutes.[35] WorldCom attempted to raise similar questions about Kansas legislation as well.[36] WorldCom's allegations are, at best, unfounded, premature and ultimately irrelevant to this proceeding.

WorldCom mischaracterizes both the Texas and Kansas statutes. The Texas law ensures that an incumbent LEC will be able to recover costs previously recovered from the interstate jurisdiction should the interstate revenues now offsetting those costs be adversely affected by Commission action. As noted in SBC's comments, incumbent LECs are each constitutionally entitled to a reasonable opportunity to recover their costs and investments and to earn a reasonable return.[37] The Texas statute thus reflects a clear concern that Commission action might deny an incumbent LEC the ability to recover its actual costs. To eliminate that concern and permit recovery, the Texas Public Utility Commission may either use a Texas intrastate universal

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[35] WorldCom, pp. 6-8.

[36] Id., p. 7 n.12.

[37] SBC, pp. 23.

service fund or permit LEC rate increases to offset those unrecovered LEC costs.

To date, the Texas Commission has had no reason to implement Section 3.608(b)(3) of the Texas Public Utility Regulatory Act of 1995, making WorldCom's complaint premature in the extreme. If and when it does, the Texas Commission might permit fully offsetting rate increases for intrastate services (which are within its sole and exclusive jurisdiction). If alternatively a Texas intrastate universal service fund is used, then the fund and its support mechanism would be subject to Section 254(f). Until the latter situation occurs (if ever), the issue of compliance with Section 254(f) does not exist. There is simply nothing in Section 3.608(b)(3) that inherently violates Section 254(f) or "burden[s] Federal universal service support mechanisms" to justify the action WorldCom seeks. The Commission should wait until there is an actual controversy over an actual Texas intrastate universal service fund before taking any action.

As to the Kansas statute, WorldCom's principle concern is also with competitive neutrality. However, Kansas HB 2728 itself addresses that concern in expressly providing that

> The [Kansas Corporation Commission] shall require every telecommunications carrier, telecommunications public utility and wireless telecommunications service provider that provides intrastate telecommunications services to contribute to the [Kansas Universal Service Fund] on an equitable and nondiscriminatory basis.

Moreover, WorldCom essentially complains about a rate rebalancing provision that will benefit WorldCom and other interexchange carriers. Reacting to the fact that Kansas intrastate access rates are higher than interstate access rates, Kansas HB 2728 set an objective to bring intrastate and interstate access charges into parity over three years with corresponding increases in local service charges as approved by the Kansas Corporation Commission ("KCC"). HB 2728,

section 6(c). Such rate rebalancing is entirely consistent with the Act. In implementing the statute, the KCC recently ordered Southwestern Bell Telephone Company ("SWBT") to reduce intrastate access charges to the level of interstate access charges as of November, 1996, and to recover most of that revenue reduction through various intrastate rate increases, including a $3.21 per month surcharge on local service. The KCC authorized SWBT and other LECs to recover the remaining amounts of their access reductions from the Kansas Universal Service Fund in a revenue-neutral manner. The alternatives ranged from offsetting all access reductions with local increases, to leaving intrastate access charges higher than interstate charges. The first alternative was not adopted pending further review by the KCC on or before September, 1998, while the second was not supported by the interexchange carriers, like WorldCom.

In any event, even assuming that WorldCom's complaints have any merit, the various actions requested cannot be taken in this docket. This docket's sole purpose is to effectuate the new federal universal service support structure. Similarly, the purpose of the Public Notice was to solicit comments on the Joint Board's recommendations. Neither this proceeding nor this round of comments can be used to raise and pass judgment on any intrastate universal service mechanism (especially those not yet implemented) and attempt to preempt State law. This is simply the improper place and time to debate intrastate universal service issues, or make any findings or draw any conclusions about applicable intrastate laws. Congress instead established Section 253 as the exclusive process and procedures by which the Commission can preempt States on matters such as raised by WorldCom.

VIII. NO REASONABLE INTERPRETATION OF THE ACT HAS BEEN OFFERED, NOR DOES ANY EXIST, THAT WOULD PROVIDE THE AUTHORITY TO IMPLEMENT MANY OF THE JOINT BOARD'S RECOMMENDATIONS WITH REGARD TO DISCOUNTS FOR SCHOOLS AND LIBRARIES

Many parties argue that the proposed level of funding for discounts to schools and libraries ($2.25B annually) goes beyond Congressional intent, may be excessive, and may burden other customers.[38] SBC agrees that the Joint Board's recommendation for an education discount fund of $2.25B is excessive and will place an undue burden on consumers. One commenter even goes so far as to say that this area of support has become a "political pork barrel" and a "grab-bag of goodies" that causes the telecommunications industry to fund items that taxpayers will not currently provide.[39] The Commission should act within its statutory authority and limit support to only those *specific telecommunications services* which are necessary to enhance learning, and lower the recommended funding amount to a more appropriate level consistent with the Act.[40]

Of significant concern is the presumption that the Commission possesses the authority to impose the federal discount framework on intrastate services. As SBC and others indicated in their comments,[41] the Commission does not have the authority to require State commissions to

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[38] See, for example, Association for Local Telecommunications Services ("ALTS"), p. 18; AT&T, p. 20; Bell Atlantic, p. 21; Cincinnati Bell, pp. 12, 13; Frontier, pp. 12, 13; General Communications, Inc. p. 7; MCI, p. 18; MFS, p. 3; New York State Education Department, p. 7; NYNEX, p. 38; Sprint, p. 14; WorldCom, Inc., p. 27.

[39] Fred Williamson & Associates, Inc., p. 4.

[40] See 47 U.S.C. 254(c)(1), 254(c)(3), and 254(h).

[41] See SBC, pp. 42, 43; Illinois Commerce Commission ("ICC"), p. 3; New York State Education Department, p. 8; Oregon Public Utility Commission, p. 3; Wyoming Public Service

use the same discount schedule for intrastate services as employed by the Commission for interstate services. The Act is very clear that a State commission is to establish the appropriate discount schedule for the intrastate services included within the definition of special services eligible for discounts.[42]

While some parties want universal service support for Internet access services and internal connections,[43] no commenter has provided any reasonable interpretation of Section 254(c)(3) or 254(h) that would permit the inclusion of these non-telecommunications services and facilities as eligible for such support. In contrast, many parties have set forth compelling analyses that conclude that Internet service and internal connections are not eligible for support under the Act and would otherwise be unreasonable.[44]

Likewise, no commenter has provided any Section 254 interpretation that supports using the concept of the lowest corresponding price (LCP) as a pre-discount price. The Act is clear

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Commission, pp. 11, 12; Bell Atlantic, p. 20.

[42] See 47 U.S.C. 254(h)(1)(B).

[43] For example, see Education and Library Networks Coalition ("EDLINC"), pp. 3, 4; Illinois State Board of Education, p. 2; Mississippi Council for Education Technology and Mississippi Library Commission, p. 4.

[44] For example, see AirTouch, pp. 18-20; ALLTEL, p. 5; ALTS, pp. 16-18; Ameritech, pp. 18, 19; AT&T, pp. 18-20; Bell Atlantic, p. 21; BellSouth, pp. 22-28; California Department of Consumer Affairs, pp. 23-34; Cincinnati Bell, pp. 13, 14; Frontier, p. 13; GTE, pp. 89-97; ICC, p. 8; MFS, pp. 30-32; MCI, p. 18; New York State Education Department, p. 7; Ohio Department of Education, p. 5; Pacific Telesis Group, pp. 37-47; Southern New England Telephone Company, p. 7; Sprint, pp. 12-14; TCA, Inc. p. 8; Fred Williamson & Associates, Inc. p. 4; WorldCom, p. 28.

that the amount to be reimbursed from the fund is based on the price a carrier would otherwise charge the school or library absent the mandated discount.[45] Furthermore, as U S WEST demonstrates, the LCP concept may be unworkable.[46] In a competitive marketplace, the packaging of services, the availability of individualized services, and the evolution of unique pricing structures will necessarily complicate the task of determining the appropriate LCP. Accordingly, not only does the Commission not possess such authority, such a mechanism should be rejected as administratively impracticable.

Some parties suggest additional ways to lower reimbursement funding beyond the recommendation to limit funding by using the LCP concept. For example, MCI suggests that in "non-competitive" markets, service providers should only be reimbursed to a price based on total service long-run incremental cost (TSLRIC).[47] There is nothing in the Act to support such a position. The Act did not give the Commission or any State the authority to artificially reduce prices either before calculating a discount, or in lieu of a discount. The literal and unambiguous language of Section 254(h)(1)(B) mandates that the discounts from the carrier's otherwise applicable charges are to be reimbursed from the universal service fund.

EDLINC on the other hand proposes to base the pre-discount price on a national

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[45] 47 U.S.C. 254(h)(1)(B).

[46] U S WEST, pp. 48, 49.

[47] MCI, p. 17.